

[66]

LETTER

FROM

THE SECRETARY OF THE NAVY,

TRANSMITTING,

IN OBEDIENCE TO

*A RESOLUTION OF THE HOUSE OF REPRESENTATIVES,  
OF THE TWENTY-SECOND INSTANT,*

Copies of the proceedings of the Court Martial ordered by Commodore Isaac Chauncey, on the Mediterranean station, for the trial of Captain Oliver H. Perry: also, for the trial of Captain John Heath of the Marine Corps.

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JANUARY 30, 1818.

Read, and ordered to lie upon the table.

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WASHINGTON:

PRINTED BY E. DE KRAFFT.

1818.

1861

LETTER

THE SECRETARY OF THE NAVY

IN RESPONSE TO

LETTER OF THE HOUSE OF REPRESENTATIVES

OF THE TWENTY-SECOND MARCH

TO THE SECRETARY OF THE NAVY  
FROM THE HOUSE OF REPRESENTATIVES  
OF THE TWENTY-SECOND MARCH

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TO THE SECRETARY OF THE NAVY  
FROM THE HOUSE OF REPRESENTATIVES  
OF THE TWENTY-SECOND MARCH

WASHINGTON

PRINTED BY J. B. FRANK

1861

## NAVY DEPARTMENT,

*January 29, 1818.*

SIR,

In obedience to the resolution of the House of Representatives of the 22d instant, I have the honor to transmit, herewith, copies of the proceedings of the Court Martial, ordered by Commodore Isaac Chauncey, on the Mediterranean station, for the trial of Captain Oliver H. Perry; and also, of the proceedings of the Court Martial, on the same station, ordered by the same officer, for the trial of Capt. John Heath, of the marine corps.

I have the honor to be,

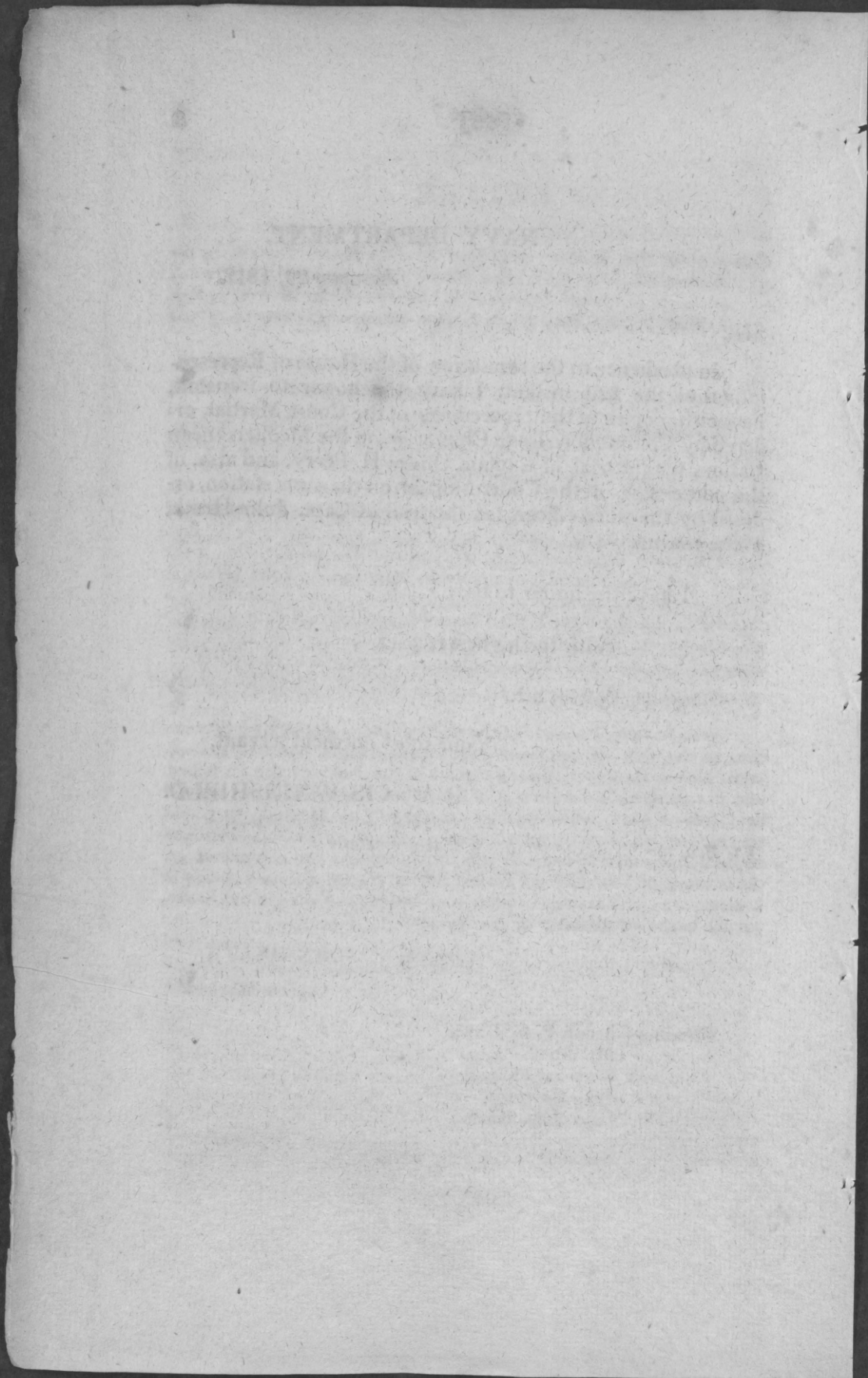
With the highest respect,

Sir,

Your most obedient servant,

B. W. CROWNINSHIELD.

*The Hon. the Speaker of the House of Representatives.*





*Charges and Specifications preferred by John Heath, Captain in the Marine Corps of the United States, and commanding a guard on board the U. States' Frigate Java, against Oliver H. Perry, Esq. Captain in the Navy of the United States, and commanding said ship.*

*Charge 1st. Ungentlemanly and unofficerlike conduct.*

*Specification.* In that, on the night of the eighteenth day of September, in the year of our Lord one thousand eight hundred and sixteen, in contempt of, and in direct violation of the laws for the better government of the Navy of the U. States, Oliver H. Perry, Esq. a captain in the Navy of the United States, and in command of the United States' frigate Java, did, in the cabin of said frigate, while laying in the harbor of Messina, then and there, without cause or provocation, make use of most abusive and unwarrantable language, to John Heath, a captain in the marine corps of the United States, and commanding a detachment on board the United States' frigate aforesaid, in words to wit, that he, the said John Heath, was a "damned rascal and scoundrel, and had not acted like a gentleman," or words to that effect.

*Charge 2d. Oppression and cruelty.*

*Specification.* In that, on the night of the eighteenth of September, in the year of our Lord one thousand eight hundred and sixteen, Oliver H. Perry, Esq. a captain in the Navy of the U. States, and in command of the United States' frigate Java, did, in the cabin of said frigate Java, while laying in the harbor of Messina, then and there, without cause or provocation, violently strike John Heath, a captain in the marine corps of the United States, and commanding a detachment on board of the United States' frigate aforesaid, being in contempt of, and in direct violation of the laws of the United States, for the better government of the Navy.

(Signed) JOHN HEATH,  
Captain Marines.

*Witnesses—*Lieut. P. G. Howle,  
Mr. Anderson,  
Corporal Philpot,  
John Coleman,  
Capt. John Heath.

*Minutes of the proceedings of a court martial, assembled on board the United States' frigate Java, in the harbor of port Mahon, upon the 10th day of January, 1817, for the trial of Oliver H. Perry, Esq. a captain in the navy of the United States.*

PRESENT.

Captain John Shaw, *President*

William M. Crane

John O. Creighton

John Downes

Thomas Gamble

} Members.

Robert S. Kerney, *Judge Advocate.*

All parties admitted, read the order of Isaac Chauncey, Esq. commodore and commander in chief of the naval forces of the United States, in the Mediterranean sea, dated Port Mahon, January 10th, 1817, directed to John Shaw, Esq. a captain in the navy of the United States. Captain Perry appeared in court, and being asked, made no objections to the members of the court. The members and judge advocate duly sworn: the annexed charges and specifications were read. Captain Perry being desired to plead to the foregoing charges and specifications, pleaded not guilty; whereupon the court proceeded to trial.

The following witnesses were duly sworn on the part of the prosecution, viz: Lieutenant Howle, lieutenant M'Call, and corporal Philpot, all of the Java; all the witnesses were ordered to withdraw, except lieutenant Howle, who was retained for examination.

Lieutenant Howle. I was in the ward room on the evening of the day specified in the charge, and was laying in my cot directly under the cabin. I heard loud talking between some persons in the cabin, and overheard captain Perry say he wanted me. I hastened out of bed, and as soon as I got my clothes on, went into the cabin; I there discovered captain Perry and captain Heath in conversation; they were standing by the after gun in the forward cabin; as I opened the door, I heard captain Heath say something about feelings; I believe captain Perry ordered him to keep silence, but will not be very positive about that; as soon as captain Perry saw me, he said, sir, I have arrested this man, (alluding to captain Heath,) you will take charge of him, and I have a great mind to put him in irons. He has not only dared to write me an insulting letter, but he has insulted me in my cabin: he then addressed himself to captain Heath and said, I would serve you right if I did put you in irons; to which captain Heath replied, "very well sir;" captain Perry said don't repeat those words again, or I will knock you down; captain Perry repeated these

words two or three times, in an attitude with his arm extended, and shaking either his finger or his fist, I do not know which, at captain Heath. Captain Heath again replied, "very well sir;" upon which captain Perry struck him. I then got in between them, and captain Perry called for his sword, but it was not given to him that I perceived; he then ordered me to take him below and put him in irons and place a sentry over him; during the time I was in the cabin, I heard captain Perry make use of the word puppy, to captain Heath. I took captain Heath as far as the hatch leading to the ward room; I then returned and asked captain Perry if I should put him in irons; he told me no I need not, but to put him in his state room and place a sentry over him; which order I obeyed. He then sent for me and observed, it was not probable that the business would stop there, and requested me to notice the circumstances on paper as they had occurred, which I did the next morning. On leaving the cabin, I asked what order I should give to the sentry who was placed over captain Heath; he told me I might remove the sentry, but to confine him to his state room: the next morning captain Perry told me I might allow him the use of the ward room. Lieutenant Howle ordered to withdraw.

Lieutenant M'Call's testimony declares none of these circumstances came under my observation. I was in bed at the time.

*Witness questioned by prosecutor.*

*Question.* Did you not hear captain Perry order me in irons?

*Answer.* I did not.

Corporal Philpot's testimony. I was on guard on the night referred to in the charge. I was sitting outside the cabin door on one of the match tubs; captain Heath passed and went into the cabin; the door was left on a jar; I heard captain Perry address captain Heath and say, how dare you have the assurance to write me; some reply was made by captain Heath; I overheard the word feelings; captain Perry said if you repeat those words again I will knock you down; he then called for the officer of the marines, and before he arrived he called for his sword; when the officer of the marines arrived, captain Perry ordered him to take captain Heath and put him in irons; lieutenant Howle then led captain Heath out of the cabin, returned and asked captain Perry if he should put captain Heath in irons; captain Perry said no, put him in his state room and place a sentry over him. Lieutenant Howle ordered me to have a sentry in readiness to place over captain Heath, which I attended to. In about fifteen minutes lieutenant Howle, returned to the ward room, and ordered me to withdraw the sentry, which I did.

The witness ordered to withdraw.

John Coleman, duly sworn on the part of the prosecution, states as follows: I was on post, at the cabin door, the night referred to. I heard captain Perry send for captain Heath; captain Heath passed



me, and went into the cabin; the first thing which I heard, was captain Perry asking for his sword; he then called for the marine officer, to put some one in double irons. I did not know who was meant at the time, nor until I saw lieutenant Howle, lead captain Heath out of the cabin. Lieutenant Howle then stepped back and asked captain Perry, if he should put captain Heath in irons; he said, no, put him in his state room, and place a sentry over him.

*Question.* By the court. Did you see the parties referred to?

*Answer.* No. I did not.

The witness ordered to withdraw.

Captain John Heath, was duly sworn, states as follows: On the evening of the 16th September, while lying in the harbor of Messina, I was ordered below, by captain Perry, from the quarter deck of this ship without a knowledge of the cause; with these words, or to this effect, "you may go below sir, I have no further use for your services, on board this ship." I remained below, for two days, under feelings the most mortifying. At length being no longer able to bear the indignity which I conceived attached to the manner of sending me below, I resolved to apply immediately to captain Perry, for arrest and charges, as I felt anxious to know the cause of my suspension from duty. With this view, I addressed captain Perry, as I thought, a respectful letter, on the evening of the 18th September, requesting my arrest and charges, at the same time stating my ignorance of the cause of his treatment to me. Captain Perry received my letter on the same evening, I think, about eleven o'clock. After his return on board, he sent for me in the cabin, and on approaching him, I was received in a manner I did not expect—his language was harsh and irritating, giving me an angry look, and in an angry tone of voice, said, how dare you to write me this insolent letter.

I was much surprised at captain Perry's manner, as I was unconscious of having offended him; I replied, as nearly as I recollect, that, I was sorry that he should construe the letter into disrespect or insolence, as none was intended, that it was merely a request for my arrest and charges. Captain Perry then said, "you damned rascal you have insulted me, it was not my intention to have arrested you, but I will now work you for it," or words to that effect; I immediately replied, captain Perry, you must recollect I have the feelings of a gentleman—hold a commission as well as yourself, and will have redress for this language. Captain Perry observed, that I had not acted like a gentleman. I replied, "very well sir." Says he, do you know to whom you are speaking; my reply was, yes sir, I am speaking to captain Perry. Captain Perry then continued his abusive language, the precise words I do not recollect, except those of rascal and scoundrel, which were repeated; I replied, "very well sir," and was preparing to leave the cabin, when he said, stop sir, you shan't go yet, you have insulted me in my cabin, and I have a great mind to put you in irons. Being unused to such language, and not in a situation to have immediate redress, and finding captain Perry became more



and more irritated, and apprehensive of the consequences, I made another effort to withdraw; he, however, ordered me to remain, and called for lieutenant Howle, of marines. Captain Perry and myself were at this time in the forward cabin; lieutenant Howle entered, and captain Perry turned towards him, and said, I have arrested this man, (alluding to me,) you will take charge of him, he has not only dared to write me an insolent letter, but has also insulted me, in my cabin, and I have a great mind to put him in irons. I replied, "very well sir." Captain Perry now advanced towards me, and, to the best of my recollection, with his fist clenched, saying, "if you repeat those words again, I will knock you down;" seeing captain Perry advancing towards me, in this manner, I immediately replied, captain Perry don't strike me; I think it was nearly at the same instant, I received a blow from him; I drew back to defend myself, and lieutenant Howle rushed in between us. During the time I was in the cabin, captain Perry called for his sword, but I do not recollect exactly at what period. He ordered lieutenant Howle to take me below and confine me to my state room, and place a sentry over me; the sentry was placed in the ward room, but removed shortly afterwards.

There being no other witnesses to examine, in the case, captain Perry submitted to the consideration of the court, two letters, which are hereunto annexed, and which are copies from originals, together with an address, which is also annexed.

The court was then cleared, and the whole of the evidence read over, by the Judge Advocate, and the following sentence pronounced:

#### SENTENCE.

The court having maturely weighed and considered the whole matter, are of opinion, that the prisoner is guilty, in part, of the first charge and specification, in that he used improper language. The court also find the prisoner guilty, in part, of the second charge and specification, in that he did strike captain Heath. The court doth, therefore, from all the circumstances of the case, and in consideration of the honorable overtures made to captain Heath, for a reconciliation, only adjudge the prisoner to receive a private reprimand, from the commander in chief, and he is hereby sentenced accordingly. The court adjourned sine die.

(Signed)

*John Shaw, President.*

*William M. Crane,*

*John Orde Creighton,*

*John Downes,*

*Thomas Gamble.*

ROBERT S. KEARNEY, J. A.

*United States' ship Washington,*

*Port Mahon, 11th January, 1817.*

Approved.

(Signed)

I. CHAUNCEY,  
*Commodore and Commander in Chief.*

*United States' Ship Java,*

*19th September, 1816.*

SIR,

IN order to prevent all mistakes, we have thought it adviseable to repeat to you in writing the prompt and voluntary proposal of captain Perry, that he regrets he should have been so much excited as to offer you personal violence, and that he will make you an honorable and personal apology, such as will be proper for you to receive and him to make.

For the above reasons we request your answer in writing.

Respectfully,

Your obdt. servts.

W. M. CRANE,

J. MACPHERSON.

*Capt. John Heath,*  
*Marine Corps.*

(Copy.)

*United States' Ship Java, Tunis Bay,*

*October 8th, 1816.*

SIR,

I am under the painful necessity of informing you of a circumstance, and of detailing to you the causes which led to an event of a very unpleasant nature.

The apparent violation of the laws of my country, which may be imputed to me in my having offered personal violence to the captain of the marine guard of this ship, I trust will be in a great measure extenuated by the consideration that, although I do not absolutely defend this mode of redress, yet I insist the consequences were produced by a sufficient provocation.

The general deportment of captain Heath towards me, so contrary to the usual address of my officers, and moreover, his marked insolence to me in many instances, induced me to believe, that his conduct proceeded from a premeditated determination to insult me on every occasion.

His palpable neglect of duty on several important emergencies, together with the usual indolence and inattention to the calls of his office, made it a desirable object with me to solicit his removal the

first convenient opportunity, not only to obtain a more active and vigilant officer, but to save him the rigorous severity of a court martial.

I will now, sir, narrate to you, the circumstances which have thus compelled me to address you.

On the evening of the 16th of September last, while this ship lay at anchor in the harbor of Messina, two of her marines deserted by jumping overboard and swimming on shore. Informed of the fact, captain Heath, as their commanding officer, was immediately sent for and acquainted therewith, but he refused to go on deck, alleging as a reason therefor, the subterfuge of indisposition. I then repeated the order for him to come on deck, and muster the marines. This duty he executed in so careless and indifferent a manner, and at the same time neglecting to report to me until called by me and requested so to do, that (conscious that such an occasion ought to animate the most careless and inattentive officer, to decision and promptitude) I was induced from such a manifest neglect of duty, to say to him, "that he might go below, and should do no more duty on board the Java."

On the evening of the 18th September, he addressed to me a letter, written by himself, which he caused to be laid on the table in the cabin, and which I received at a very late hour. This letter being couched in language which I deemed indecorous and disrespectful, I sent for him and demanded why he thus addressed me, and particularly why he had selected a time so obviously improper. He immediately assumed a manner so highly irritating and contemptuous, that I believed it my duty to arrest him, (after having expressed to him my indignation at such conduct) and for this purpose sent for the second marine officer, at the same time ordering him to be silent. In utter disregard of this order, though repeatedly warned of the consequences of his disobedience, he persevered in the same irritating tone and manner, until at length, after reiterating attempts to effect his silence, I gave him a blow. Frequent outrage added to frequent insult, provoked this disagreeable consequence.

Mortified, that I should so far *forget myself*, as to raise my arm against any officer holding a commission in the service of the United States, however improper his conduct might have been, and however just the cause, I immediately, in conformity to this principle, offered to make such an apology as should be proper for both; this proposal was refused, which precluded the necessity of any further overtures. The offer was consonant to the views of some of the most distinguished officers of the squadron, after their being made fully acquainted with every particular.

From my having been educated in the strictest discipline of the Navy, in which, respect and obedience to a superior was instilled into my mind as a fundamental and leading principle; and from a natural disposition to chastise insolence and impertinence, immediately when offered me, even in private life, must be inferred the burst of indignant feeling, which prompted me to inflict personal satisfaction on an



officer who thus daringly outraged the vital interests of the service in my own person.

I have thus gone through this unpleasant recital with as much candor and conciseness as possible. I might indeed detail to you other acts of delinquency in this officer, but I will not further weary you with the circumstances of this unfortunate affair, but confine myself to the request that you will be pleased to order a court of inquiry or court martial, as you may see fit, to examine into the causes which led to this seeming infraction of the laws of the Navy.

After eighteen years of important and arduous services in the cause of my country, it can hardly be imagined that I have any disposition to infringe that discipline which is the pride and ornament of the Navy; and to prevent any intention being falsely ascribed to me, I beg you will give immediate attention to this request, that the Navy, as well as my country, shall be satisfied of the integrity of my motives.

I have the honor to be,

Sir,

Very respectfully,

Your obedient servant,

(Signed)

O. H. PERRY.

*Isaac Chauncey, Esq. Commodore  
and Commander in Chief  
U. S. Naval Forces, Medi-  
terranean.*

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Mr. PRESIDENT—

*Gentlemen of the Court—*

I shall confine myself to a few brief remarks on the subject which has brought me before this honorable court, begging leave to refer them to my letter to the commodore in chief, requesting this court martial for a detail of circumstances, trusting, that a character gained in a long and honorable service is safe in the possession of gentlemen of your rank and professional respectability.

I am deprived of a most important witness in my favour by the absence of Mr. Anderson, who was present at the commencement of this affair: (the time the conduct of the prosecutor was most offensive:)



*Minutes of the Proceedings of a General Court Martial assembled and held on board the United States' Frigate Java, in the Harbor of Port Mahon, upon the 31st day of December, 1816, and held every day afterwards (Sundays excepted) until the 9th day of January, 1817, inclusive.*

PRESENT.

Captain John Shaw, *President*,  
 William M. Crane,  
 John O. Creighton,  
 John Downes,  
 Major John Hall, (*Marine Corps.*)  
 Capt. George W. Rodgers,  
 Thomas Gamble,  
 H. B. Breckenridge, (*M. C.*)  
 William Hall, (*M. C.*)  
 Doctor R. S. Kearney, *Judge Advocate.*

All persons admitted, read the order of Isaac Chauncey, Esq. commodore and commander in chief of the naval forces of the U. States in the Mediterranean Sea, dated the 30th day of December, 1816, directed to captain John Shaw at Port Mahon, for the trial of such prisoners as shall be brought before them.

Captain John Heath, of the marine corps, appeared in court, and being asked, declared he had no objection to the members of the court. The members of the court and the judge advocate were then duly sworn. The following charges and specifications were then read:

*Charges and Specifications of Charges exhibited by Oliver H. Perry, Esq. Captain in the Navy of the United States, and Commander of the United States' Frigate Java, against Captain John Heath, commanding the guard of Marines attached to said ship.*

*Charge 1st.* Disrespectful, insolent, and contemptuous conduct to me, his superior officer.

*Specification 1st.* That he did, on or about the 22d of July, 1816, on board the U. States' [frigate] Java, then standing into the bay of Naples, on being asked by me "why a certain marine was suffered to appear on deck in so filthy and dirty a dress?" reply to me in an insolent, disrespectful, and contemptuous manner.

*Specification 2d.* That he did, late in the evening of the 18th of September, 1816, on board the United States' ship Java, then at an

anchor in the harbor of Messina, cause a letter written by himself, and couched in language highly improper to be used towards his commanding officer, to be left on my table in the cabin of said ship.

*Specification 3d.* That he did when sent for into the said cabin, on being asked why he took such a time to write me a letter of that kind, assume a deportment towards me highly provoking and disrespectful. The aforesaid charge and specifications being in violation of a part of the 15th article and a part of the 13th article of rules and regulations for the better government of the navy of the United States.

*Charge 2d.* Neglect of duty and unofficerlike conduct.

*Specification 1st.* That on or about the evening of the 16th of September, 1816, on board the United States' ship Java, then at anchor in the harbor of Messina, he, the said captain John Heath did, on two marines jumping overboard to swim from the ship, neglect to come on deck, although called and informed of this circumstance, alleging as a reason therefor the subterfuge of his being sick.

*Specification 2d.* That he did when ordered by me at said time and place to come on deck and muster the marines, execute that duty in a careless and indifferent manner, and when the marines were mustered, did neglect to report to me until called and directed so to do.

*Specification 3d.* That he did neglect, on the desertion of said marines from the ship, to take those immediate steps for their recovery, that become him as commanding officer of the detachment to which they belonged, and were required by the urgency of the case. This charge and specification being in violation of a part of the 20th article and the 28th article of rules and regulations for the better government of the navy of the United States.

*Charge 3d.* Disobedience of orders.

*Specification.* That he did, at the time and place referred to in the 3d specification of the 1st charge, though repeatedly ordered to be silent, continue to speak, although warned of the consequences, and in the same indecorous and contemptuous manner as therein alleged, thereby violating a part of the 14th article of rules and regulations for the better government of the navy of the United States.

(Signed) O. H. PERRY.

*United States' ship Java,*

*Algiers Bay, 14th Oct. 1816.*

Captain Heath being desired to plead to the foregoing charges, pleaded "not guilty:" whereupon the court proceeded to trial.

The following witnesses were duly sworn on the part of the prosecution, to wit, lieutenant Joseph Macpherson, lieutenant Edward R. McCall, and lieutenant Park G. Howle, all of the frigate Java. The two latter witnesses were directed to withdraw, and the court proceeded to the examination of lieutenant Macpherson, who states as follows:

I recollect, on standing into the Bay of Naples, captain Perry sent or called to captain Heath, and spoke about a marine who was on deck very dirty. Captain Heath replied the marines were in want of clothing, or they had no clothes.

*Witness questioned by the Court.*

*Question.* Was captain Heath's reply to captain Perry, when he asked why the marine was suffered to come on deck dirty, disrespectful and insolent, or otherwise unbecoming?

*Answer.* His manner of reply to captain Perry was, I thought, very disrespectful.

*Question.* What did captain Heath say; will you describe his manner?

*Answer.* When he came up to captain Perry he had his hands in his pockets and his hat a little on one side of his head, with a swagger. It was this circumstance which attracted my notice. I heard him make some remark about the marine clothing, but do not distinctly recollect what it was.

*Question.* What notice did captain Perry take of captain Heath's conduct at the time, and did he appear to feel it as an indignity?

*Answer.* Captain Perry told captain Heath if he did [not] take better care of the marines he should get somebody that would. Captain Perry then leant over the hammock cloths, evidently to restrain the feelings excited by captain Heath's manner.

*Question.* Is not captain Heath in the habit of wearing his hat on one side and his hands in his pockets?

*Answer.* I should say that he was in the habit of wearing his hat a little on one side, as well as my recollection serves me. I cannot say that I have observed that he has the habit of carrying his hands in his pockets.

*Question.* Is it usual for captain Heath when addressing captain Perry on duty, to keep his hands in his pockets?

*Answer.* No, I never saw it.

The witness states in relation to the second specification of the first charge, that he knows nothing in relation thereto; his information being altogether hearsay. His knowledge of the third specification is also derived entirely from hearsay. This witness knows nothing in relation to the second and third charges and specifications.

*The witness questioned by the prosecutor.*

*Question.* Lieutenant M. Pherson has stated that I told captain Heath that if he did not pay more attention to the marines, I would get somebody else that would. Had not captain Heath previously said to me, that if the marines were dirty he could not help it?



*Answer.* I recollect that captain Heath used that reply to captain Perry.

*Question.* Was the marine, although in worn out clothes, clean in compliance with the orders that had been issued?

*Answer.* No.

*Witness questioned by the prisoner.*

*Question.* Have you not frequently told me that you did not believe I intended any disrespect to captain Perry that day?

*Answer.* I recollect on going into the ward room to have made some remark which led to the subject. You protested solemnly that it was not your intention to offer any disrespect to captain Perry; I then said that I believed you did not, and added that I thought you showed too much dignity on the occasion. I have had frequent conversations with captain Heath and he has always made the same protestations, which I was bound to believe.

*Question.* Did you never tell me that you thought at times there was something unpleasant in my manners, and have I not as often repeated that if so I was unconscious of it and regretted it extremely?

*Answer.* Yes, I have made that observation to captain Heath, and he has often remarked that he regretted that his manner at times was unpleasant.

*Question.* Have I not frequently expressed to you that nothing was further from my intention than treating captain Perry with disrespect?

*Answer.* I have heard captain Heath say so.

*Question.* Have you not frequently heard me say that I used every exertion to please captain Perry in the discharge of my duty?

*Answer.* I have heard captain Heath say that there was no man in the navy he would sooner please than captain Perry; that he regretted exceedingly what had happened. I heard him say so since his arrest. Captain Heath has always spoken in favor of captain Perry as have all the officers of the ship.

The witness withdrew.

Lieutenant M'Call of the Java states as follows: He knows nothing in relation to the first charge; states in relation to the second, it was reported to me that two marines had jumped overboard. I sent down to captain Heath to come on deck; he sent me word he was unwell, and requested me to call on lieutenant Howle. I heard lieutenant Howle engaged in turning out the marines to muster them. After relieving lieutenant Turner, who went in a boat in pursuit of the deserters, I sent down to inform captain Perry of the circumstance. When he came on deck he asked for the commanding marine officer. I then sent down for captain Heath in captain Perry's name. Captain Heath then came on deck. I heard him hurrying the sergeant, who might have been rather slow in executing his duty.



Captain Perry then called captain Heath to him. Their conversation was so low that I overheard nothing.

*Witness questioned by the court.*

*Question.* Did captain Heath neglect his duty, and was his conduct unofficer like?

*Answer.* I cannot say with certainty whether he did or did not.

*Question.* At what time in the evening did this occurrence take place?

*Answer.* About eight or half past eight.

*Question.* Did captain Heath do his utmost to recover the men, or make any exertions to effect it?

*Answer.* I believe he made none.

*Question.* Do you know whether captain Heath was on the sick list at the time the men deserted?

*Answer.* I do not know: he came from shore; said he was unwell, and turned in.

*Question.* Had captain Heath been absent from the ship that day, and did you know of his being indisposed?

*Answer.* He had been absent from the ship. I did not know that he was unwell until he mentioned it.

*Question.* How often had captain Heath been called, and how long was it before he appeared on deck?

*Answer.* Only twice to my knowledge. I suppose it was from ten to fifteen minutes before he appeared on deck.

*Question.* Do you know the nature of his indisposition?

*Answer.* No.

*Question.* Did it appear to you that captain Heath, from indisposition, was unable to attend to his duty earlier?

*Answer.* I think he might have got up sooner.

*Question.* Has captain Heath generally paid proper attention to the marines under his command?

*Answer.* I believe he has.

*Question.* Did captain Heath receive an order to pursue the men, and was there a boat at his disposal for the purpose?

*Answer.* There were boats for the purpose; but I do not know that captain Heath received such an order.

The prosecutor declined asking the witness any question.

*Witness questioned by the prisoner.*

You have stated to the court, that you believe I made no exertions to recover the marines who had jumped overboard. After I had ascertained who were absent, what exertions do you suppose could have been made on my part to recover them without orders from my commanding officer?

*Answer.* I presume you could have made none without orders from captain Perry.

*Question.* By the court—

Was captain Heath active or dilatory in mustering the marines?

*Answer.* I heard captain Heath hurrying the sergeant. I heard him three or four times tell him to bear a hand.

*Question.* Was captain Heath prompt and active on the occasion?

*Answer.* Not very.

*Question.* By the prosecutor—

Did captain Heath attend to the marines until directed so to do by me?

*Answer.* I believe not. The witness knows nothing in relation to the third charge and specification.

The witness withdrew.

Lieutenant Howle, of Marines, examined. Knows nothing in relation to the 1st specification of the 1st charge. States in relation to the 2d specification, that when he was called into the cabin, he was shown by captain Perry the letter referred to; that he is not competent to decide on its merits; presumes it will be laid before the court, who will be better able to judge. The witness was not present at the time referred to in the 3d specification of the 1st charge.

*Question.* By the court—

Do you know whether the conduct of captain Heath was highly disrespectful and provoking towards captain Perry?

*Answer.* I do not.

The witness states, in relation to the second charge, as follows:

On the 16th of September, captain Heath went on shore and returned on board in the evening; he complained of being unwell, and after some short time retired to his state room. Lt. Forrest, who was on deck, sent below to inform me, that two marines had jumped overboard from the ship. I hastened on deck, and meeting one of the marines, I sent him below to the sergeant to hurry the marines on deck for a muster. Captain Perry appeared on deck and inquired where captain Heath was. I told him he was below and unwell. He inquired what the matter was. I replied I could not inform him. I went on the birth deck, and with the assistance of the sergeant, got all the marines on deck. When I returned this time, I found captain Heath was on deck in conversation with captain Perry. All I heard captain Perry say was, "go, sir, and muster the men, and report to me who are absent." While captain Heath was mustering the men, captain Perry asked him, "if he meant to be all night about it." As soon as captain Heath found out who the absent men were, he reported them. After captain Heath had reported to captain Perry, he looked at him for some time, and said, "go below, sir, I have no further use for your services."

*Question.* By the court—

Do you know that captain Heath was indisposed?

*Answer.* I only know it from his coming on board earlier than usual, and his saying so.

*Question.* How long was it after you told captain Perry that captain Heath complained of being unwell before he appeared on deck?

*Answer.* In a few minutes; in a very short time, for a man who was in bed and had to dress himself.

*Question.* Was the conduct of captain Heath prompt and active on this occasion, or otherwise?

*Answer.* He turned out, I suppose, as soon as he could, and he hurried the sergeants in their duty.

*Question.* Did captain Heath make any efforts to muster the marines and ascertain who was absent before captain Perry directed him to do so?

*Answer.* The marines were got on deck nearly as soon as captain Heath got there. He was in conversation with captain Perry when I came up.

*Question.* Did captain Heath make those exertions that the occasion called for?

*Answer.* As far as was in his power, I suppose, he did. There was no delay in getting the marines on deck. I had them on deck as soon as captain Heath got there.

*Question.* Was captain Heath so much indisposed, as, in your opinion, to be incapable of attending to his duty?

*Answer.* It might have been an inconvenience to him to attend to duty, notwithstanding, he did so.

*Question.* You have stated, that captain Heath, ate supper after he came on board, did he eat heartily?

*Answer.* I did not observe what he ate.

*Question.* Did captain Heath report his case to the surgeon?

*Answer.* I do not know. I do not know whether he was on board.

The witness states, in relation to the third charge, that when he entered the cabin captain Perry said to him, "sir I have arrested this man; he has not only dared to write me an insulting letter, but he has insulted me in my cabin." The only words I heard from captain Heath, were about feelings. Captain Perry ordered him to keep silence, or he would put him in irons. Captain Heath said very well. Captain Perry then told him if he repeated those words again he would knock him down. Captain Heath again replied very well; upon which captain Perry struck him. He then ordered me to take him out and put him in irons. I conducted captain Heath out of the cabin, returned and asked captain Perry if I should put him in irons. He told me to confine him to his room and put a sentry over him.

*Witness questioned by the court.*

*Question.* Were captain Heath's language and manner respectful or disrespectful to captain Perry at the time specified?

*Answer.* I did not conceive them disrespectful. The only words I heard him say, were "very well." His gestures I did not observe.

*Question.* Were those words uttered in a contemptuous manner?

*Answer.* I did not conceive that they were.

The court adjourned to meet on Wednesday morning, 10 o'clock

*Wednesday morning, January 1st, 1817.*

The court met pursuant to adjournment. Present, the president, members, and judge advocate.

Lieutenant Howle's examination continued. The prosecutor declined questioning the witness.

*The witness questioned by prisoner.*

*Question.* When you were first apprised of the two marines having deserted from the ship on the evening of the 16th September, did you not know that I had retired to bed and believe me to have been unwell?

*Answer.* I believed you to be unwell from your retiring, and from your saying so.

*Question.* Did you receive any orders or instructions from me to muster the marines to discover who were missing, and to take proper steps to recover them.

*Answer.* I received orders from captain Heath through a midshipman to muster the marines and ascertain who were missing, and to attend to the duty, that he himself was unwell. I received no order which related to the recovery of the men.

*Question.* After I came on deck, and had the marines mustered and reported to captain Perry, do you believe that I had it in my power to have made any further exertions for their recovery?

*Answer.* No, I do not think you had.

*Question.* Was I careless and indifferent in mustering the marines after I came on deck on the evening of the 16th of September?

*Answer.* I did not perceive that you were careless about it. After you were done with captain Perry you spoke to and hurried the sergeant.

*Question.* Have you any reason to believe from my general character and conduct on board this vessel, that I would descend to a falsehood or subterfuge in order to evade my duty?

*Answer.* Not the least.

*Question.* From the observations which you made in the cabin on the evening of the 18th September, when I was in conversation with captain Perry, do you not think that my language and deportment towards him were extremely forbearing and mild?

*Answer.* I should suppose it was mild.

The witness withdrawn.

Doctor Parsons, surgeon of the Java duly sworn.

*Question.* Was captain Heath on the sick list on the evening of the 16th September, or did he report himself to you at that time?



*Answer.* He was not on the sick list on that evening. He complained to me on the following morning of a slight indisposition. He did not report himself to me on the evening of the 16th September.

*Witness questioned by prisoner.*

*Question.* Were you on board this ship early on the evening of the 16th September.

*Answer.* I do not recollect being out of the ship on that evening.

*Question.* Have I ever endeavored to evade my duty by feigning indisposition, or alleging as an excuse, the subterfuge of being sick?

*Answer.* I do not recollect that captain Heath ever feigned indisposition. He was always actually indisposed when he applied for my assistance.

*Question.* Do not causes of indisposition often occur which disqualify a man for the exercise of duty, when there is no symptom apparent to a person unacquainted with medicine?

*Answer.* Such cases do occur.

*Question.* Could he then form an opinion of the existence of such indisposition?

*Answer.* He could not.

The witness withdrawn.

*Lieutenant M'Phearson examined by the prisoner.*

*Question.* You are the executive officer of this ship, did you convey to me the order which you received from captain Perry when going into Naples on the 22d July, for the ship's crew to be cleaned?

*Answer.* The order was promulgated throughout the ship in the usual manner. I cannot recollect whether or not captain Heath was especially notified of it.

*Question.* You say that my manner of replying to captain Perry relative to the dirty appearance of the marine, was disrespectful; was it also contemptuous or insulting?

*Answer.* Yes.

*Question.* Did captain Perry, after this occurrence on the quarter deck, ever speak to you of the disrespectful, contemptuous, and insulting reply he had received from me, and if so, how long after?

*Answer.* Three or four days afterwards, capt. Perry mentioned to me that his feelings had been very much excited at the manner in which capt. Heath replied to him on the occasion referred to.

*Question.* Did capt. Perry notice my reply to him at the time in any manner, either by arrest, suspension from duty, reprimand, or otherwise?

*Answer.* He did not arrest or suspend capt. Heath, but told him if he did not pay more attention to the marines, he would get somebody that would.

*Question.* How long have you been under the command of capt. Perry?

*Answer.* I served under capt. Perry in 1808, at New York, and also on Lake Ontario, and have been his first lieutenant for the last fourteen or fifteen months.

*Question.* From the knowledge you have of capt. Perry's character, and his rules and system of discipline, do you think he would suffer any officer under his command to treat him in a disrespectful, insolent, and contemptuous manner, without an immediate arrest or suspension from duty, or otherwise notice it?

*Answer.* I have never known an instance but the present.

*Question.* Have you any reason to believe from my general character and conduct on board this ship, that I would descend to a falsehood or subterfuge, in order to evade my duty?

*Answer.* I have no reason to believe you would.

The witness withdrawn.

Lieut. McCall re-examined by the prisoner.

*Question.* Were you on the quarter deck of this ship on the 22d July, when I replied to captain Perry relative to a certain marine who was dirty in his appearance?

*Answer.* I might have been, but I do not recollect the circumstance.

*Question.* Do you believe that my complaint of indisposition on the evening of the 16th September, when sent for in consequence of the desertion of the two marines, was a subterfuge or an excuse to evade my duty.

*Answer.* No.

*Question.* When I came on deck I hurried the sergeants in mustering the marines, did you at the time think I performed that duty in a careless, indifferent manner?

*Answer.* He hurried the sergeant very often, he appeared very anxious to get through, in order to make his report.

*Question.* After I had mustered the marines, and reported them to capt. Perry, did you hear capt. Perry say to me that he had no further use for my services on board this ship, and order me below?

*Answer.* Captain Heath was called by captain Perry. Some conversation took place between them which I did not hear. Captain Heath then went below, and I concluded he was suspended.

The witness withdrawn.

Midshipman Buchanan, of the Java, duly sworn on the part of the prisoner:

States, he was on deck the night the two marines jumped overboard. He was sent below to inform captain Heath of it. Captain Heath observed to him that he was unwell, and to give his compli-

ments to lieutenant ——— and request him to let lieutenant Howle know the circumstance.

*Question.* From my manner of speaking to you did you not think me indisposed?

*Answer.* I only thought so from your telling me so. You spoke in a low tone of voice.

The witness withdrawn.

Midshipman Overton, of the Java, duly sworn.

*Questioned by the Prisoner.*

*Question.* When you came to my state room on the evening of the 16th of September, to inform me that captain Perry wished to see me on deck, was I not making every exertion to obey the summons?

*Answer.* Yes.

The witness withdrawn.

Corporal Philpot and John Coleman, belonging to the Java, duly sworn on the part of the prisoner.

*Corporal Philpot questioned by the Prisoner.*

*Question.* Do you know of any thing that took place in the cabin of the frigate Java, between captain Perry and myself, on the evening of the 18th of September last?

*Answer.* I was corporal of the guard on the evening referred to. I was sitting outside of the cabin door, on a match tub. Capt. Heath passed me and went into the cabin. I heard captain Perry say to captain Heath, how dare you, sir, have the assurance to write me such a letter. Captain Heath replied to him, and I heard him use the word feelings. Captain Perry said, if you repeat that again, I will knock you down. He called for his sword, and for the officer of marines, to take captain Heath and put him in irons. Lieutenant Howle appeared, and led captain Heath by the arm out of the cabin, and took him to his state room. Lieutenant Howle returned, and inquired of capt. Perry if he should put captain Heath in irons; he told no, but to put him in his state room, under charge of a sentry. I had a sentry in waiting, and when lieutenant Howle returned, I was ordered by him to withdraw him, which order I obeyed.

*Question.* Did you see any thing disrespectful, insolent or contemptuous in my conduct towards captain Perry, that evening?

*Answer.* I was not present during their conversation, and captain Heath spoke so low, that I could not understand what he said.

*Witness questioned by the Court.*

*Question.* Where did this conversation take place; in the forward or after cabin?

*Answer.* In the forward cabin.

*Question.* How long was captain Heath in the cabin?

*Answer.* About ten or fifteen minutes.

*Question.* Was the door open or shut?

*Answer.* The door was on a jar, it wanted two or three inches of being shut.

*Question.* Did captain Perry call for his sword before Mr. Howle came in, or was it after?

*Answer.* Before Mr. Howle came in.

The witness was ordered to withdraw.

John Coleman examined as follows, by the prisoner:

*Question.* Do you know any thing that took place in the cabin of the frigate Java, between captain Perry and myself, on the evening of the 18th of September last?

*Answer.* I remember captain Perry sending for captain Heath. After captain Heath came into the cabin, I heard captain Perry call for his sword. I did not know what it was for, at that time. Then he called for the marine officer, as far as I could understand, to put captain Heath in double irons. Then lieutenant Howell (Howle) led captain Heath out of the cabin door. Lieutenant Howell stepped back, and asked captain Perry if he should put captain Heath in irons. Captain Perry said no: put him in his room, and place a sentry over him.

*Question.* Did you see any thing disrespectful, insolent, or contemptuous in my conduct towards captain Perry that evening?

*Answer.* No; I did not.

*Witness questioned by the Court.*

*Question.* Was the cabin door shut or open?

*Answer.* The cabin door was nearly shut.

*Question.* Are you sure it was double irons?

*Answer.* Yes.

*Question.* Did you distinctly hear captain Perry order captain Heath in irons?

*Answer.* I heard captain Perry order some person put in irons. I did not know who it was at that time.

*Question.* Did you hear what captain Heath said to captain Perry, to cause his being ordered in irons?

*Answer.* No; I did not.

*Question.* In what part of the ship were you when this took place?

*Answer.* I was on post, at the cabin door.

*Question.* Was there any other person in the cabin besides captain Perry and captain Heath, at the time you heard somebody ordered to be put in irons?

*Answer.* There was another person besides: he came on board with the captain, that night.

The witness withdrew.

Evidence on the part of the prisoner closed.

The court adjourned, to meet on Thursday morning, 10 o'clock.



*Thursday morning, January 2, 1817.*

The court met pursuant to adjournment. Present, the president, members, and judge advocate.

Captain Perry being called upon to give his evidence in the case, addressed the court to the following purport:

Permit me, gentlemen of the court, before I commence my testimony, to observe, that I have been upwards of eighteen years in the service, and this is the first time I have ever stood before a court martial as a prosecutor, and captain Heath is the first marine officer with whom I ever had any difficulty. Amongst that class of officers there are many, who, from a long acquaintance, I entertain a sincere respect for, and it is with extreme regret that I have been compelled to bring charges against one of the corps. How much I have looked over in the conduct of captain Heath, he well knows. Whenever he has acted improperly, he has only received friendly admonition, and until the evening of the 18th of September, respectful and kind treatment.

Captain Perry was then duly sworn, and stated as follows: On standing into the bay of Naples, at the time referred to, in the charge, I observed a marine come on the quarter deck, in a very dirty condition, although an order had been issued before, that every person should be particularly clean in their dress. I sent for captain Heath or called to him, I do not recollect which, and pointed to the marine; captain Heath approached me in a manner which I thought indecorous, and unbecoming. I told him, that a man in the dress and condition of the marine, was a disgrace to the ship, and I believe I said to the corps. He replied, he had reported a want of clothing, and if the marines were not clean, he could not help it. I then told him if he could not, I would find some one that would. I leant over the hammock cloths, to suppress the feelings occasioned, by the conduct of captain Heath. On captain Heath sending me the letter which is now before the court, and of which, I complain, I sent for him to come into the after cabin; I merely asked him the occasion of his sending me such a letter. He assumed at once a manner which was irritating, in the highest degree, both in person and in looks, shaking his head at me; this had the effect which might have been expected, and I expressed my indignation in warm terms. After some further conversation, I ordered him to be silent, and sent for the second marine officer. Captain Heath paid no attention to my orders. Previous to this I asked him if he was aware to whom he was speaking, and where he was. He replied, in an insulting tone, and throwing himself back, with a contemptuous smile, said he presumed he was speaking to captain Perry, and was in the Java's cabin, or words to that effect. I arrested, and repeatedly ordered him to be silent. He continued to reply until he was taken out of the cabin, and all my efforts to make him keep silence, were ineffectual.

When the marines jumped overboard and after I had got on deck,

I asked for captain Heath; to my surprise he was not on deck. I was told he was sick; it was the first time I had heard of his being so. I inquired repeatedly the nature of his indisposition. No one could tell. I then ordered him on deck. When he made his appearance there, he said nothing about his indisposition; nor did I find his name on the sick report of the surgeon the next day; neither have I heard since, that he really was indisposed. I directed him to muster the marines. After a lapse of some time, being extremely anxious to know the number of men who had deserted, I sent for him, and demanded why he was so dilatory; he replied, the marines were mustered; I asked him why he had not reported; he said he did not yet know how many were gone. After some further delay, I at length obtained a report; not however in the short time stated by lieutenant Howle. It was from fifteen to twenty minutes, at least, after I got on deck, and after I had given the order to muster the marines, that I obtained the report; a length of time which I deemed altogether unnecessary.

The following is a copy of the letter referred to in the foregoing testimony:

*U. S. Frigate Java, Messina, 18th Sept. 1816.*

SIR,

On the evening of the 16th instant, I was ordered below by you, from the quarter deck of this ship, with these words, or to this effect: "I have no further use for your services on board this ship."

I have waited until this moment to know, why I have been thus treated, and being ignorant of the cause, request my arrest and charges.

Very respectfully, your obedient servant,

(Signed)

J. HEATH, capt. marines.

*Capt. O. H. Perry, commanding  
U. S. F. Java.*

*Capt. Perry questioned by the court.*

*Question.* Was it in the forward or after cabin that this conversation with captain Heath took place?

*Answer.* A part in the forward and a part in the after cabin.

*Question.* When captain Heath replied that he was speaking to captain Perry, &c. did he smile?

*Answer.* Yes. He had a sardonic grin on his face and a contemptuous look.

*Question.* Was any other person in the cabin at the time?

*Answer.* Mr. Anderson, the consul at Tunis, was present. He is a very material witness in the case, and I regret very much that I cannot have the benefit of his testimony.

*The witness questioned by the prisoner.*

*Question.* What were the precise words which I used in reply to you relative to the dirty appearance of the marine alluded to in the first specification of the first charge, and which you say was insolent, disrespectful and contemptuous?

*Answer.* I do not recollect the precise words.

*Question.* Why did you not arrest or suspend me at the time, conceiving as you did, that my conduct merited it?

Captain Perry objected answering this question and submitted it to the court. The court was then cleared, and it was decided that the question was an improper one, and the witness not bound to answer it. The parties were then admitted, and the determination of the court made known. Captain Perry explained that he only objected to the question from a sense of its inutility in the case. He would now however give a voluntary answer to the question, in order to remove any impressions, if such there were, that he was influenced by any other motive than that which he had already stated. He gave the following answer: "That it was from a reluctance to suspend or arrest any officer when there was a possibility to avoid it." The prisoner prayed the court to record the proceedings in this case, which the court hereby grant.

*Question.* Did you not, on the quarter deck of this ship, on the evening of the 16th of September, when I came to you by your orders, tell me I had been sent for several times, and that I had sent you word I was sick, and did I not on that occasion reply to you that I was unwell, and had been so all day?

*Answer.* I have no recollection of your telling me you were sick.

*Question.* Did not lieutenant Howle inform you before I came on deck, that I was unwell?

*Answer.* He did so.

*Question.* Was not lieutenant Howle attending to sending up from below and mustering the marines when you sent for me on the evening of the 16th of September?

*Answer.* I believe he was. I directed him so to do.

*Question.* What reason have you to suppose that my complaint of indisposition on being sent for from deck was a subterfuge or an excuse to evade my duty?

*Answer.* I supposed that an active officer, on such an occasion, even if he was a little indisposed, ought to have come on deck.

*Question.* Have you any reason to question my veracity?

*Answer.* I must have had some reason from the circumstance of your not appearing on the sick list. This is the universal custom of the service and of this ship, and I am entitled to the services of all my men and officers who are not so reported.

*Question.* Would it have been proper for me to have ordered a boat and sent officers and men in pursuit of the deserters without your orders?



*Answer.* Certainly not. You must first obtain permission from myself or from the executive officer.

*Question.* Did you not prevent my taking any further steps than I did to secure the deserters, by telling me you had no further use for my services on board, and ordering me below?

*Answer.* Certainly. You were suspended and sent below, and could not, of course, take any further steps.

*Question.* What do you mean to be understood by the words in the third specification of the first charge—"why he, (captain Heath,) took such a time to write me a letter of that kind?"

*Answer.* What I meant by that was, your sending me the letter at night. I think it was about eleven o'clock. This, I consider, a very improper time to be addressed on business of that kind.

*Question.* Do you know at what time I sent you this letter?

*Answer.* I found the letter in my cabin, on my table, when I returned on board. I had left the ship about an hour before.

*Question.* What do you *perceive* in the letter I addressed to you, requesting an investigation of my conduct, to be either improper or reprehensible?

*Answer.* I have already expressed my entire disapprobation of the letter. It is before the court, and for them to judge of.

*Question.* Do you not think that every officer, when laboring under a suspension from duty, and conscious himself that he is injured, has a right to request an investigation of his conduct?

*Answer.* At a suitable time.

*Question.* What was the language you addressed to me on approaching you in your cabin, on the night of the 18th of September?

*Answer.* I addressed myself to you with some degree of warmth, but respectfully. I inquired why you chose such a time to write me a letter of that description.

Captain Perry not being bound to answer the foregoing question, the reply which he has given to it is a voluntary one, and the court direct that it shall be so noted.

*Question.* After you spoke to me, concerning the letter I wrote you on the evening of the 18th of September, did I not reply to you in this manner, or to this effect: that I was very sorry you had construed the letter into insolence, as it was very far from my intention to insult you, my object being to obtain arrest and charges?

*Answer.* At some period of the conversation you assured me it was not your intention to insult me, but your conduct was so much at variance with your assurances, that I paid no attention to them.

*Question.* On finding you much irritated in your cabin, on the evening referred to, did I not attempt to leave the cabin, when you ordered me to remain?

*Answer.* Yes: he did so, but I told him to remain, that I was not yet done with him. I then sent for the second marine officer, and arrested captain Heath.

*Question.* Did I not report to you on the evening of the 16th of



September, the marines who were absent, and was not my report made in a very respectful and explicit manner?

*Answer.* Yes.

The evidence for and against the prosecution being here closed, captain Heath moved the court to allow him until Saturday morning, 11 o'clock, to prepare his defence, which was granted accordingly.

The court adjourned, to meet on Friday morning, 11 o'clock.

*Friday morning, January 3, 1817.*

The court met and adjourned, to meet on Saturday morning, 11 o'clock.

*Saturday morning, January 4, 1817.*

The court met pursuant to adjournment. Present, the president, members, and judge advocate. Captain Heath appeared in court, and being called upon, addressed the court, a copy of which address is hereunto annexed.

The court was then ordered to be cleared, and the whole of the evidence read over by the judge advocate, and the following sentence pronounced:

#### SENTENCE.

The court, after mature deliberation on the testimony adduced, and having weighed and considered the whole matter, together with what the prisoner had to offer in his defence, agree that the charges are in part proven. The court doth, in conformity thereto, find the prisoner guilty of the first charge, and guilty of the first and third specifications of said charge. The court also find the prisoner guilty of the second specification of the first charge, so far as it accuses the prisoner with writing and sending the letter, but acquit him of using language therein highly improper to be used to his commanding officer.

The court acquit the prisoner of the second charge, and of all the specifications annexed thereto, and find him guilty of the third charge, and the specification to said charge. The court doth, therefore, from the circumstances of the case, adjudge the prisoner to receive a private reprimand from the president of the court, and he is hereby sentenced accordingly.

(Signed) *John Shaw, President.*  
*William Crane,*  
*John Orde Creighton,*  
*John Downes,*  
*John Hall,*  
*George W. Rodgers,*  
*Thomas Gamble,*

*H. B. Breckenridge, captain M. C.  
William Hall,  
R. S. KEARNEY, J. A.*

*United States' ship Washington,  
Port Mahon, 10th January, 1817.*

Approved.

(Signed)

**I. CHAUNCEY,**  
*Commodore and commander in chief.*

*Mr. President, and Members of this Honorable Court,*

I little expected, on leaving my native country, that I should be arraigned before a public tribunal. But it appears it has fallen to my lot to be thus conspicuous. I will not waste the time of this court, in needless declamation, or unnecessary digressions; but shall aim at the vindication of my character and conduct, to rescue which from the imputation of a charge, I submit to your consideration, a few remarks.

I shall proceed to notice the first specification to the first charge, of disrespectful, insolent and contemptuous conduct. It appears, from the evidence which the witness has stated in this case to the court, that he thought my conduct disrespectful to captain Perry; yet it also appears, when questioned by me, that he does not believe I intended any disrespect to captain Perry. My manner of disrespect is also described by having my hat on one side of my head, and my hands in my pockets. It really did not occur to me before, that being in this particular situation (as described by the witness) was intended to convey disrespect, or considered as a mark of insolence or contempt: if so, I have been frequently guilty of the same thing. I have frequently, Mr. President, been in such a situation, and without a knowledge of it at the time: yet the witness does not inform this court, that as soon as I was called by captain Perry, that I placed my hat and my hands in the situation he described; my manner of approaching capt. Perry, too, is not unnoticed: it is represented as being in a kind of swagger. I confess, Mr. President, I have not the advantage of some men, as regards the attitude of walking. It may be also true, that I am not remarkable for walking in a handsome manner; I have probably not paid that attention to this particular as others have. Every circumstance which the witness has stated, may have occurred, and yet by no means intended as disrespect, insolence or contempt to captain Perry. As I have before observed, the witness has stated to the court, that when questioned by me as to the circumstance, he did not believe I intended any disrespect to captain Perry, yet he observes, he was bound to believe me, from my solemnly asserting that I did not. I do not recollect of ever pledging my honor, or solemnly averring on the occasion, as I deemed my word sufficient. The evidence of the witness is however before this honorable court, and they will judge how far it will affect me.

I have a faint recollection of the circumstances, as the first specification states to have occurred on the 22d July. I remember, however, captain Perry's calling or sending for me on the quarter-deck, and pointing out to me a marine who was badly attired. I confess, I was much mortified to see the situation of the marine, particularly as I had always endeavoured to make the detachment appear as respectable as possible. I mentioned to captain Perry the situation of the guard as respected clothing, that I had addressed him before on the same subject, and could not help it, or words to that effect. I observed this, I thought, to captain Perry, in my usual manner when I addressed him, which I have ever deemed respectful and polite.

Captain Perry, from his manner, was evidently much incensed, but I presumed it was more at the appearance of the marine, than any thing else; for I can assure this honorable court, that so far from intending to treat captain Perry with disrespect on the occasion, I was astonished to find it a charge against me.

Captain Perry has been pleased to state to this court, in answer to my question, "Why he did not arrest or suspend me at the time," that it was from an indisposition to arrest or suspend any officer where there was a probability to avoid it. Does it not appear then, that captain Perry overlooked my conduct on that day? It was passed over. I was punished, inasmuch as I received a reprimand. Why then, let me ask this honorable court, is this circumstance produced against me as a charge, under the arrest of the 18th September? I beg that the court will take this under their serious consideration.

With regard to the second specification of the first charge, I have to observe, that the letter, as therein expressed to be written, has been produced to this court, and will be left to its wise determination to judge how far it may be deemed insolent and disrespectful. But I hope this court will take into consideration the circumstances under which it was written. I was ordered below on the 16th September, without knowing the cause. I remained below for two days, under feelings the most mortifying—I felt no longer able to bear the indignity which I conceived in the manner attached in sending me below. The wise and salutary laws of our country provide for the punishment of offenders in any situation, and also affords redress to the injured. Had I neglected my duty, or acted in any manner unbecoming the officer and gentleman, I will ask this honorable court if the proper mode of proceeding was not by a court martial.

Under those feelings of mortification, which I have already observed to the court, I wrote the letter which is stated in the second specification of the first charge.

The third specification, I shall duly notice. We come now to the charge of neglect of duty, and its several specifications. I am charged in the first instance with having screened myself from duty on the night of the 16th September, under the subterfuge of being sick. As this charge, it appears, has attracted no little attention of the court, it may not be amiss to dwell a little on it.—I am accused of resorting to



the subterfuge of sickness, in order to evade the exercise of my duty. In the first place, I shall observe, that in the numerous catalogue of diseases by which we are occasionally afflicted, many often occur where it is entirely impossible for the most sagacious physician to detect the nature and extent, by any external signs. They may elude the most subtle tact of medical art. For the truth of this fact, I appeal to the testimony of all medical men. These cases of indisposition, too, may be so sudden and severe, as to disqualify us immediately for the exercise of duty. But it is asserted that the commanding officer is not bound to believe any man unfit for duty, until he is reported so by the surgeon. But is the surgeon bound to report every case of sickness immediately on his knowledge of it, without an order to this effect from the captain? This will not be found to be the case, in any of the existing customs or regulations of the navy. The surgeon is ordered to make his report of sick at certain specified times, and never recurs to his commanding officer to inform him of every individual case, immediately as it may happen to be presented to him. It follows then from the above facts, that in the case of sickness, the testimony of the sick man must ultimately be admitted as complete and sufficient evidence for its existence, that the report of such indisposition is always regulated by order of the captain himself. If then, the circumstance of sickness be received as a satisfactory plea for incapacity of duty, the charge here exhibited in this specification, even if examined by the most rigid mode of reasoning, in such cases, is entirely invalidated. But I trust I am not here reduced to the necessity of appealing before this court, to the rigid decrees of law, even supposing that they did not in this instance, operate in my favor. No, I feel conscious of bearing such a reputation among my fellow men, as to defy the malicious attacks of any one. I trust it will appear to this honorable court, that the evidence is perfectly satisfactory in my behalf.

As to the second and third specifications under the charge of neglect of duty, and unofficerlike conduct, I shall pass them unnoticed. The evidence relative to those specifications, is before this court, which will judge how far my conduct is reprehensible.

The last charge of disobedience of orders, and the third specification of the first charge, present themselves to view. My prosecutor has stated to this honorable court, that when I approached him in his cabin, on the evening of the 16th September, that I assumed at once a manner which was irritating in the highest degree. He does not inform this court the language I received on approaching him in his cabin. Suppose we admit for a moment, that I did assume such a manner, (but which I do not admit,) is there a being in existence, possessing nice and honorable feelings, could tamely submit to be abused with impunity? On approaching captain Perry, I received harsh and improper language. I felt conscious that I did not deserve such treatment; I was thunderstruck for a moment; I was at a loss to know whether the scene before me was real or imaginary. I found



captain Perry much irritated; I used gentle language to appease him; I found my efforts ineffectual; I informed captain Perry that I possessed the feelings of a gentleman, held a commission as well as himself, and should have redress for such language. I attempted to leave the cabin, but was ordered to remain. Figure to yourselves, Mr. president, and members of this court, my peculiar situation on that evening. I was arraigned before my commanding officer in his cabin; I received harsh and irritative language; I was ordered to be silent, and not to leave the cabin. Is it possible that my feelings could have been restrained on the occasion? My indignation was, no doubt, expressed in my countenance. I might have assumed a deportment observed to this honorable court, by my prosecutor; but was it without cause? Show me the being in existence, who regards his honor and reputation, who would have acted with less appearance of resentment. A wanton and outrageous attack is made on me, and I am debarred by the exertion of an arbitrary power, the privilege of self defence, which is guaranteed to us all by the laws of God. My character, which is dearer to me than life, assaulted, and every weapon of defence interdicted. Can this be suffered? Nature herself revolts at it; she will not endure that all the finest and noblest feelings, the sublimest portion of her ethereal spirit be thus rudely violated. The ground of honor is consecrated, it is impaled by barriers which the hand of tyranny must not invade.

Mr. president, I am about to submit my cause to this honorable court. A few words and I have done. My replication to the charges and specifications in question, has been drawn up in a hurry. I have not replied to them as I could wish, but my sentiments are conveyed. It is sufficient. From the evidence which has been adduced before this court, I trust it will appear that I am not guilty of any one charge or specification alleged against me. If my manner has been construed into contempt, and my words misrepresented, I regret it, because such was not intended; and it has already been stated to this court, that it is believed I never intended any disrespect to captain Perry.

Whatever, then, may be the determination of this court from the proud consciousness of my innocence, I shall derive consolation.

(Signed)

JOHN HEATH,  
*Captain Marines.*